

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D. C.

In the matter of

2005/2006 U.S.-CHINA AIR SERVICES
CASE AND DESIGNATIONS

:
:
: OST-2004-19077
:

PETITION OF AMERICAN AIRLINES, INC. FOR
RECONSIDERATION OF ORDER 2004-9-5

Communications with respect to this document should be sent to:

HENRY C. JOYNER
Senior Vice President -
Planning
American Airlines, Inc.
P.O. Box 619616, MD 5628
DFW Airport, Texas 75261

MICHAEL C. LENZ
Managing Director -
International Planning
American Airlines, Inc.
P.O. Box 619616, MD 5635
DFW Airport, Texas 75261
(817) 963-2354
(817) 967-3179 (fax)
mike.lenz@aa.com

WILLIAM K. RIS, JR.
Senior Vice President -
Government Affairs
American Airlines, Inc.
1101 17th Street, N.W.
Suite 600
Washington, D.C. 20036

CARL B. NELSON, JR.
Associate General Counsel
American Airlines, Inc.
1101 17th Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 496-5647
(202) 857-4246 (fax)
carl.nelson@aa.com

September 10, 2004

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2005/2006 U.S.-CHINA AIR SERVICES : OST-2004-19077
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American Airlines, Inc. hereby petitions for reconsideration of Order 2004-9-5, September 3, 2004, instituting the 2005/2006 U.S.-China Air Services Case and Designations. American respectfully seeks reconsideration and/or clarification on the following issues.

(1) Applications. Order 2004-9-5 requires that certificate applications be submitted by September 22, 2004, but does not detail what the applications should contain. Indeed, the order states that "[w]e expect all applicants to provide specific service proposals at the direct exhibit stage [October 13, 2004]" (p. 2), which could be interpreted to mean that combination applicants are not required to present route-specific proposals by September 22.

American requests that the Department, on reconsideration, specifically require combination applicants by September 22 to identify their proposed routings between the U.S. and China, as well as their proposed weekly frequencies, departure and arrival times, and equipment type and configuration. Moreover, the Department should require combination applicants by September 22 to state whether they are seeking entry in 2005 or 2006. If combination applicants are seeking entry in either year, they should state which year they would prefer, and whether they would accept an award for the other year in the event they do not receive their preference.

Such fundamental information should be required at the application stage, and should not be deferred to Direct Exhibits, in order to inform the public and all participating parties of the nature of each combination applicant's proposal at the outset of the proceeding, particularly given the highly expedited timetable the Department has established.

(2) Traffic forecasts. The Evidence Request requires combination applicants to provide passenger traffic forecasts "for the 12 months ending March 31, 2006, for the 2005 selection, and March 31, 2007, for the 2006 selection" (III.B.1.b).

The Department should reconsider such a requirement, and instead provide that each combination applicant must prepare and submit a single traffic forecast for the year ended March 31, 2006, regardless of whether its preference is for entry in 2005 or in 2006.

The reality is that in a multi-year selection proceeding such as this one, the participating combination carriers will most likely apply for both years, stating a preference for one year but also stating they would accept an award for the other year as a fall-back position. Moreover, a separate forecast for the year ended March 31, 2007 would be entirely speculative, because such an exercise would of necessity be conducted without knowing the identity of the new combination entrant in 2005 or its service pattern. In any event, to compare not only 2005 v. 2005 traffic forecasts, but 2005 v. 2006 traffic forecasts as well, would add a significant element of complexity to the proceeding that would in the end prove neither useful nor productive.

Accordingly, each combination applicant should be required to submit one traffic forecast - for the year ended March 31, 2006 - which the Department and the parties should use for comparative analysis of the merits of each proposal, regardless of whether the combination applicant prefers entry in 2005 or in 2006.

Such a change in the Evidence Request will streamline the proceeding while still providing a sufficient evidentiary record, place all combination applicants on an equal footing for comparative purposes, reduce needless administrative burdens, and facilitate an expedited decision.

(3) Confidentiality of DOT Information Responses.

DOT staff has required parties to the proceeding to submit form confidentiality affidavits agreeing not to disclose certain traffic data in the Information Responses to any person outside the proceeding or to any person who has not executed an affidavit. On September 8, 2004, we were informally advised by DOT staff that the traffic forecasts by applicant combination carriers in their Direct Exhibits on October 13 must be submitted on a confidential basis under 14 CFR 302.12 since such forecasts are required to be based on confidential traffic data. Yesterday, however, DOT staff informally advised us that confidential treatment is not required provided that the parties' submissions do not disclose traffic data from the Information Responses on a carrier-specific basis.

Under 14 CFR Part 241, Section 19-7(d)(2), international data in the Passenger Origin-Destination Survey may be disclosed "[t]o parties in any proceeding before the Department to the extent that such data are relevant and material to the issues in the proceeding upon a determination to this effect... by the Department's decision-maker. Any data to which access is granted pursuant to this section may be introduced into evidence subject to the normal rules of admissibility of evidence."

The Department should, on reconsideration, state that traffic data provided in the Department's Information Responses may be referenced in the parties' Direct Exhibits, Rebuttal Exhibits, Briefs, and other pleadings - to the extent relevant and provided the data shown is not carrier-specific - on a public, non-confidential basis.

(4) Form of authority. Order 2004-9-5 states that "[i]t is not our intention to award certificates authorizing U.S.-China and beyond route authority broader than that specifically described in the proposals. Nevertheless, the parties are free to argue in their submissions that we should adopt a different approach. We will weigh the relative merits of any positions presented in the record before reaching a final determination on this issue" (p. 2).

American believes that new entrants should be awarded broad authority consistent with the terms of the route description in the bilateral agreement. See American's petition for reconsideration in U.S.-China Air Services (2001), OST-1999-6323, February 2, 2000. Rather than seek reconsideration on this matter, American will - as provided in Order 2004-9-5 - urge in its subsequent submissions in this proceeding that new entrants should receive broad U.S.-China authority.

(5) Exhibit exchange. Finally, the Department should amend the procedural timetable to add a requirement that interested parties, on or before October 6, 2004, submit in the docket the names and street addresses (with telephone numbers) of persons who should receive printed copies of Direct Exhibits and Rebuttal Exhibits, and the number of copies requested. The Department should require same-day hand delivery of printed copies to addresses in Washington, D.C., and overnight delivery to other addresses. Parties should be required to circulate printed copies of their exhibits, and should not impose on others the task of producing printed copies from electronic submissions.

CONCLUSION

American respectfully asks the Department to reconsider and/or clarify Order 2004-9-5 as requested above, and to do so in advance of the application date of September 22, 2004.

Respectfully submitted,

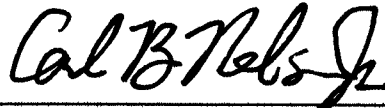
A handwritten signature in cursive script, reading "Carl B. Nelson, Jr.", written in black ink. The signature is fluid and stylized, with a prominent "C" and "N".

CARL B. NELSON, JR.
Associate General Counsel
American Airlines, Inc.

September 10, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by email on all persons named on the attached service list.

A handwritten signature in cursive script, reading "Carl B. Nelson, Jr.", written in black ink.

CARL B. NELSON, JR.

September 10, 2004

Service List

Marshall S. Sinick (Alaska, Aloha, Florida West)	msinick@ssd.com
Brian Hunt (American Trans Air)	brian.hunt@iflyata.com
Ed Faberman (MN Airlines)	epfaberman@uhlaw.com
Jonathan Hill (Hawaiian)	jhill@dlalaw.com
Nathaniel Breed (Pan American)	npbreed@zslaw.com
Gary Garofalo (Air Transport Int'l)	ggarofalo@ggh-airlaw.com
Steve Lachter (ASTAR)	lachter@erols.com
Joanne Young/David Kirstein (North American, America West & World)	jyoung@bakerlaw.com
Aaron Goerlich (Sunworld)	dkirstein@bakerlaw.com
R. Bruce Keiner, Jr. (Continental, Continental Micronesia)	agoerlich@ggh-airlaw.com
Jeffrey Manley (United)	rbkeiner@crowell.com
Megan Rosia (Northwest)	jeffrey.manley@wilmerhale.com
David E. Vaughan (UPS)	megan.rosia@nwa.com
John L. Richardson (Amerijet)	dvaughan@kelleydrye.com
Carl Nelson, Jr. (American, TWA)	jrichardson@johnlrichardson.com
Robert E. Cohn/Sascha Vanderbellen (Delta)	carl.nelson@aa.com
Lorraine Halloway (Air Micronesia)	robert.cohn@shawpittman.com
Howard Kass (US Airways)	Sascha.VanderBellen@shawpittman.com
Robert P. Silverberg (ABX, Kitty Hawk, Midwest)	lhalloway@crowell.com
Kevin Montgomery (Polar)	Howard_Kass@usairways.com
Russ Pommer (Atlas)	rsilverberg@sghdc.com
Tom Lydon (Evergreen)	kevin.montgomery@polaraircargo.com
Moffett Roller (Gemini)	rpommer@atlasair.com
Mark W. Atwood (Custom Air, Kalitta)	tom.lydon@evergreenaviation.com
Nancy Sparks (Federal Express)	mroller@rollerbauer.com
Stephen Alterman (Northern Air Cargo, Horizon)	matwood@sherblackwell.com
Lawrence Wasko (Arrow)	nssparks@fedex.com
Pierre Murphy (USA 3000)	cargoair@aol.com
Cecilia Bethke (Air Transport Association)	ldwasko@erols.com
Ronald Priddy (National Air Carrier Assn.)	pmurphy@lopmurphy.com
	cbethke@airlines.org
	rpriddy@naca.cc